

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

v.

STEPHEN SYLVESTER WALKER, JR.,

Defendant

CRIMINAL NO. JKB-11-0290

* * * * *

MEMORANDUM AND ORDER

On January 17, 2013, this Court held a hearing on Defendant's motions to suppress and denied them for reasons stated in open court. (ECF Nos. 67, 69.) Afterward, all involved continued with the previously established schedule in the case, anticipating a pretrial conference on January 28, 2013, and a three-day trial beginning February 4, 2013. Defendant, who is represented by counsel, filed a motion *in limine* (ECF No. 72), and defense counsel and Government counsel jointly filed proposed voir dire and proposed jury instructions (ECF Nos. 73, 74). On January 24, 2013, Defendant, acting *pro se*, filed a "notice of appeal" from this Court's order denying his suppression motions. (ECF No. 76.) The Government has now moved for a finding by this Court that the appeal is frivolous and has requested the Court to retain jurisdiction over the case and to proceed to the scheduled trial. (ECF No. 80.) The motion will be granted.

Generally, a notice of appeal divests a district court of jurisdiction and confers jurisdiction upon the circuit court of appeals to hear the appeal. However, the Fourth Circuit has recognized a doctrine of "dual jurisdiction" permitting the district court to find an interlocutory appeal to be frivolous and to continue to exercise jurisdiction in the case. *See United States v. Montgomery*, 262 F.3d 233, 239-40 (4th Cir. 2001) (recognizing rule in appeal from district

court's order denying motion to dismiss indictment). In the instant case, Defendant's appeal is from an interlocutory, nonappealable order denying his motions to suppress. *See United States v. North American Coal Exchange*, 676 F.2d 99, 100 (4th Cir. 1982) ("Orders denying a pretrial motion to suppress evidence are interlocutory and nonappealable.").

The Court is satisfied that the Government has shown proper grounds for its motion. Accordingly, the motion (ECF No. 80) is GRANTED. The Court FINDS Defendant's appeal from the order denying his motions to suppress to be FRIVOLOUS. The pretrial conference and trial will proceed as scheduled.

DATED this 28th day of January, 2013.

BY THE COURT:

_____/s/
James K. Bredar
United States District Judge